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**Subject: Administrative Review for Vendors**

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Effective Date: 0June 13, 2014

Revised from: October 1, 2008

**Policy:** Authorized WIC vendors have the responsibility to comply with WIC program regulations, policies and procedures. The State Agency (SA) may impose sanctions on vendors for non-compliance. These sanctions range from warning letters to permanent disqualification from participation in the WIC program. Refer to Section IV of the Vendor Participation Contract for a full description of the sanctions.

Vendors may request an Administrative Review of certain sanctions or other adverse actions.

**Reference: 7 CFR § 246.12 (h)(6) and §246.18(b)**  
**VEN 08.00.00**

**Procedure:****1. Administrative Review.**

- a. The Local Agency (LA) and/or the SA must provide written notice of any adverse action taken against a vendor. The notice must specify the action being taken, the effective date of the action, the reasons for the action, and explain the vendor's right to and the procedures to follow to obtain an administrative review. The notice must be issued in accordance with the provision of the Kansas Administrative Procedure Act (K.S.A. 77-501 *et seq.*).<sup>1</sup>
- b. A vendor wishing to request an administrative review of an adverse action must submit a written request (via U.S. Mail or FAX) for an administrative review of the action. The request for a review must include a summary of the reasons for requesting the review. Requests for review shall be addressed to the Office of Administrative Hearings, 1020 South Kansas Avenue, Topeka, Kansas 66612-1327. A written request for a review must be filed within 15 days from the date of the Notice of adverse action, which date is indicated by the Certificate of Service in the Notice. An additional 3 days shall be allowed if the Notice of adverse action is mailed to the vendor. The written request for a review must be received by the Office of Administrative Hearings on or before the end of the time period for requesting a review. If a vendor files a request for a review, a telephone number shall be included where the vendor can be reached during business hours. Failure to file a timely request for an administrative review will result in a waiver of the vendor's right to an administrative review to the SA and the decision will become a Final Order.

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<sup>1</sup>When a vendor is disqualified due in whole or in part to violations in 7 CFR 246.12(l)(1), such notification must include the following statement: "This disqualification from WIC may result in disqualification as a retailer in the Food Stamp Program. Such disqualification is not subject to administrative or judicial review under the Food Stamp Program."

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- i. The Presiding Officer shall conduct a pre-hearing conference. A pre-hearing conference is a conference between the parties or their counsel and the Presiding Officer to discuss matters relevant to a full hearing. A pre-hearing conference may be conducted in person or over the telephone. If the issue cannot be resolved, the Presiding Officer shall schedule a tentative hearing date.
- ii. At the administrative review pre-hearing conference, the proceeding may, with the agreement of all parties and the concurrence of the Presiding Officer, be converted to a fair hearing or a summary proceeding for disposition of the matter as provided by the Kansas Administrative Procedure Act (K.S.A. 77-537).
- iii. As part of the administrative review, the Office of Administrative Hearings must provide the vendor with the following:
  - 1. Adequate advance notice of the time and place of the administrative review to provide all parties involved sufficient time to prepare for the review;
  - 2. The opportunity to present its case and at least one opportunity to reschedule the administrative review date upon specific request;
  - 3. The opportunity to cross examine adverse witnesses;
  - 4. The opportunity to be represented by counsel if desired;
  - 5. The opportunity to examine, prior to the hearing, the evidence upon which the State Agency's action is based;
  - 6. An impartial decision-maker whose determination is based solely on whether the State Agency has correctly applied Federal and State statutes, regulations, policies, and procedures governing the program, according to the evidence presented at the administrative review; and
  - 7. Written notification of the review decision, including the basis for the decision. The written notification need not amount to a full opinion or contain formal findings of fact and conclusions of law. The written notification should be provided within 90 days from the date of receipt of a vendor's request for an administrative review. This time frame is only an administrative requirement and does not provide a basis for overturning the State Agency's adverse action if a decision is not made within the specified time frame.
- c. Appealing an action does not relieve the food vendor of responsibility for continued compliance with the terms of any written agreement or contract with the SA or LA. Participating vendors who are disqualified from the program must reapply for authorization to participate. Applicants who are denied participation at application may appeal the denial, but shall **not** participate in the program while awaiting the decision.

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- d. The Presiding Officer shall not deny or dismiss a request for an administrative review unless:
  - i. The request is not received in writing by the Office of Administrative Hearings within the time limit of 15 days from receipt of the notice of adverse action;
  - ii. The request is withdrawn in writing by the appellant or a representative;
  - iii. The appellant or a representative fails, without good cause, to appear at the scheduled hearing; or
  - iv. The request for review is regarding an adverse action that is not subject to administrative review.
- e. If a decision is rendered as a result of an administrative hearing and the vendor expresses an interest in pursuing a higher review of the decision, the SA and/or the Presiding Officer shall explain any available state level appeal procedures. The SA and/or the Presiding Officer shall explain the right to pursue judicial review of the decision. Kansas statutes allow individuals to file suit against the State of Kansas in District Courts.

**Reference: 7 CFR § 246.18 (a)(1)(i) and (ii)**  
**VEN 08.00.00**

2. Effective Date of Adverse Actions against Vendors

- a. The State agency must make denials of authorization and disqualifications effective on the date of receipt of the notice of adverse action.
- b. The State Agency must make all other adverse actions effective no earlier than 15 days after the date of the notice or adverse actions and no later than 90 days after the date of the notice of adverse action or, in case of an adverse action that is subject to fair hearing, no later than the date the vendor receives the review decision.

**Reference: 7 CFR § 246.18 (a)(2); VEN 08.00.00**

3. The following adverse actions **are** subject to administrative review.

- a. The denial of authorization to become a WIC vendor based on:
  - i. the vendor selection criteria for competitive price;

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- ii. the vendor selection criteria for minimum variety and quantity of authorized WIC foods;
  - iii. a determination that the vendor is attempting to circumvent a sanction;
  - iv. the vendor selection criteria for business integrity;
  - v. The vendor selection criteria for a current Food Stamp Program (FSP) disqualification or Civil Money Penalty (CMP) for hardship;
  - vi. SA established vendor selection criteria if based on a WIC vendor sanction or a FSP withdrawal of authorization or disqualification;
  - vii. The SA's vendor limiting criteria; or
  - viii. The vendor submitted an application and expects that 50% of their food sales revenue will be from WIC redemptions.
- b. The termination of a current WIC Vendor contract:
- i. for cause; or
  - ii. because of a change in ownership or location or cessation of operations.
- c. The disqualification of a current WIC vendor:
- i. based on a trafficking conviction; or
  - ii. based on the imposition of a FSP CMP for hardship.
- d. The imposition of a fine or a CMP in lieu of disqualification.
- e. The disqualification or a CMP imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC SA.

**Reference: 7 CFR § 246.18 (a)(1)(iii)**  
**VEN 08.00.00**

4. The following adverse actions are **NOT** subject to administrative review.
- a. the validity or appropriateness of the SA's vendor limiting;
  - b. the validity or appropriateness of the SA's selection criteria;
  - c. the validity or appropriateness of the SA's client access criteria and participation access determinations;

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- d. the SA's determination to include or exclude an infant formula manufacturer, wholesaler, distributor or retailer from their list;
- e. the validity or appropriateness of the State Agency's prohibition of incentive items;
- f. the SA's determination whether to notify a vendor when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction;
- g. the State Agency's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation;
- h. the denial of authorization if the SA's vendor authorization is subject to the procurement procedures applicable to the SA;
- i. the expiration of a vendor's contract;
- j. disputes regarding food instrument payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error, as permitted by 246.12(k)(3)); and
- k. the disqualification of a vendor as a result of disqualification from the Kansas Food Assistance Program.